

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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JUN 14 1993

In the Matter of)

Implementation of the Cable Television)
 Consumer Protection and Competition Act)
 of 1992)

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

MM Docket No. 92-259

Broadcast Signal Carriage Issues

**SUPPLEMENT TO PETITION FOR EMERGENCY RECONSIDERATION AND
 REQUEST FOR MODIFICATION OF RULES OF YANKEE MICROWAVE, INC.**

On May 3, 1993, Yankee Microwave, Inc. ("Yankee"), by its attorneys, filed a "Petition For Emergency Reconsideration And Request For Modification Of Rules" (hereinafter "Petition For Reconsideration") in the above-referenced proceeding. Since that date, additional facts have come to light which bear consideration in connection with Yankee's Petition For Reconsideration.

In its Petition for Reconsideration, Yankee challenged one aspect of the Commission's retransmission consent rules -- specifically the so-called "superstation exemption" which exempts from retransmission consent superstation signals obtained from a satellite carrier, but not from other distributors such as microwave carriers or cable TV-owned CARS systems.¹ Yankee argued that an unintended impact of the Rule would be to unfairly discriminate in favor of satellite carriers over microwave or

¹ See 47 C.F.R. § 76.64(b)(2).

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other signal delivery means and entities.

As evidence in support of this discriminatory impact Yankee noted that cable systems had already begun to notify Yankee of their intentions to switch modes of carriage if Yankee could not provide them with assurances they would receive relief from retransmission consent requirements. Yankee further noted that once a cable system invests in the equipment to receive satellite delivery of such superstations, it would be unlikely to return to microwave delivery.

In its Order of May 26, 1993 in MM Docket No. 92-259 (____ FCC Rcd ____ (1993), FCC No. 93-278, released May 27, 1993), the Commission denied Yankee's requested temporary stay of the effective date of its Rules, which was filed concurrently with the petition for reconsideration.² Therein, the Commission stated that "the evidence provided by Yankee regarding the extent to which signals will be delivered by satellite instead of microwave is speculative, and it is unclear whether cable systems will actually change the delivery system used to receive [superstations]."

This supplement provides the Commission with recently received letters from various cable companies, representing ten

² Through its stay request Yankee sought protection from the deleterious effects of the Retransmission Consent Rule until the Commission could rule on Yankee's pending Petition for Reconsideration. A petition for Reconsideration of The Commission's denial of Yankee's stay request is being filed simultaneously herewith.

of the fourteen systems serving the states of Maine and New Hampshire that receive delivery of distant superstation WSBK from Yankee. (Thus, there is no must-carry option for any of Yankee's cable system customers.) One letter from A-R Cable Services, Inc. notifies Yankee that it is discontinuing carriage of the Yankee feed of WSBK for its systems in Mechanic Falls and Lewiston, Maine.³ Another A-R system serving Bangor, Maine, which recently discontinued receipt of Yankee's WSBK feed, has already begun receiving that same service via satellite. Another system serving St. Johnsbury, Vermont has orally informed Yankee that it will discontinue receipt of the Yankee feed for WSBK unless free retransmission consent can be provided for WSBK. Letters received from State Cable TV, Better Cable TV, and Casco Cable TV, memorialize their stated intention to switch carriage of superstation WSBK-TV from Yankee to a satellite feed, if no cost retransmission consent is not readily conferred.⁴ The reality of business planning dictates that decisions of this kind are not made on the eve of the effective date of a new Rule --

³ The May 4, 1993 letter from A-R Cable was not received by Yankee until after the filing of its last supplement on May 6, 1993.

⁴ State Cable TV owns systems in Maine serving Augusta, Norway, Livermore, and Rumford, and systems in New Hampshire serving Conway and Littleton. State Cable has verbally informed Yankee that, although it is not memorialized within their letter, the New Hampshire systems would also be dropping the Yankee feed. Better Cable TV owns systems serving the Waterville, Maine area. Casco Cable TV owns a system in Brunswick, Maine.

such must and will be made well in advance of October 6, 1993.

To date Yankee has received written or verbal notification of impending termination from twelve of the fourteen systems to which it provides microwave delivery of superstation WSBK. Loss of these customers will jeopardize the very existence of Yankee, a common carrier serving some of these customers for more than twenty years. These developments demonstrate the immediate and imminent danger faced by Yankee as a result of the disparate treatment afforded under the new Rule, and further underscore the necessity of immediate action on the part of the Commission to modify the discriminatory language of the "superstation

exemption." If the Commission fails to act and allow the station to

language of the "superstation exemption," that rule must be stayed and the language of the exemption modified to permit microwave carriers to continue to compete with satellite to provide less expensive and better quality service to cable systems and their subscribers.

Respectfully submitted,

YANKEE MICROWAVE, INC.

By: 

John D. Pellegrin

By: 

Evan D. Carb

Its Attorneys

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Date: June 14, 1993

Declaration of Bernard Karlen

I Bernard Karlen, President of Yankee Microwave, Inc., under the penalty of perjury, do hereby declare that I have read the foregoing "Supplement to Petition for Emergency Reconsideration and Request for Modification of Rules of Yankee Microwave, Inc." and that the facts set forth therein are true and correct to the best of my knowledge and belief.

Bernard E Karlen

Date: June 11, 1993

A-R Cable Services, Inc.

One Media Crossways, Woodbury NY 11797
(516) 364-8450

May 4, 1993

Yankee Microwave
31 Ward Drive
New Rochelle, New York 10804

Re: Lewiston, Maine System

Dear Sir:

Yankee Microwave is currently providing A-R Cable Services-ME, Inc.'s ("A-R") Lewiston system with video and audio program transmission service of the television signals for WSBK-TV on its Lewiston and Mechanic Falls headends and CKSH-TV and CHLT-TV on its Lewiston headend.

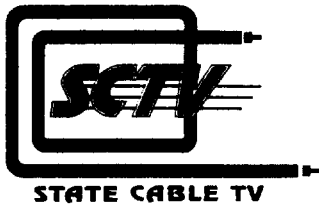
A-R hereby notifies Yankee Microwave that it desires to discontinue carriage of WSBK-TV at both headends. As a result, Yankee Microwave will continue only to provide transmission service of CKSH-TV and CHLT-TV to the Lewiston headend. Please provide A-R with the adjusted rate for this service.

Very truly yours,

A-R CABLE SERVICES-ME, INC.

By: John L. Rosignol

MMR149/pl



June 2, 1993

Mr. Bernard K. Kalen
31 Ward Drive
New Rochelle, NY 10804

Dear Mr. Karlen:

Please be advised that unless our four small systems with approximately 25,000 subscribers receives Retransmission Consent from WSBK-TV, we will be forced to take the WSBK-TV signal from the Eastern Microwave satellite feed for which we require no Retransmission Consent.

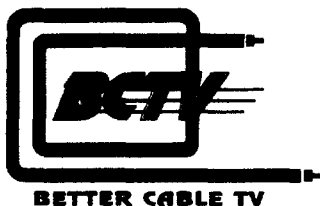
Regretfully, the substitution of the satellite signal for the same signal now being delivered by Yankee Microwave will incur considerable addition expenses which we may be forced to pass along to our subscribers. We await your word concerning the relief.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Reginald Clark', is written over the typed name.

Reginald Clark
General Manager

RC/cd



June 4, 1993

Mr. Bernard K. Karlen
Yankee Microwave, Inc.
31 Ward Drive
New Rochelle, N.Y. 10804

Dear Mr. Karlen:

We have more than 15,000 subscribers in our cable systems. Unless we receive Retransmission Consent from WSBK-TV we will be forced to drop the present WSBK-TV feed supplied by Yankee Microwave and replace it with the Eastern Microwave satellite feed which requires no Retransmission Consent. Unfortunately, doing this will incur considerable additional



Casco Cable TV

Fort Andross
14 Maine St., Suite 111
Brunswick, Maine 04011

June 7, 1993

Mr. Bernard K. Karlen
Yankee Microwave, Inc.
31 Ward Drive
New Rochelle, NY 10804

Dear Mr. Karlen:

We are a small system, in Maine with approximately 13,000 subscribers. Unless we receive retransmission consent from WSBK-TV, we will either be forced to take the WSBK-TV signal from the Eastern Microwave satellite feed for which is required no retransmission consent or to stop providing this popular channel to our customers.

Regretfully, the substitution of the satellite signal for the same signal now being delivered by Yankee microwave will increase our costs. These will eventually have to be passed along to our subscribers; a situation we obviously desire to avoid.

We await your word concerning the relief.

Sincerely,

Judy Hausmann
General Manager
Casco Cable Television